

Mark S. Middlemas, USB No. 9252  
Brigham J. Lundberg, USB No. 12583  
LUNDBERG & ASSOCIATES, PC  
3269 South Main Street, Suite 100  
Salt Lake City, UT 84115  
(801) 263-3400  
(801) 263-6513 (fax)  
[ECFmailDistGroup@Lundbergfirm.com](mailto:ECFmailDistGroup@Lundbergfirm.com)

Attorneys for Freedom Mortgage Corporation  
L&A Case No. 20.76317.2

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH  
Central Division

In re:	Bankruptcy No. 20-20210 KRA
Kyle Blaine Jackson and AmberLee Marie Jackson	(a Chapter 13 case)
Debtors.	Filed Electronically

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**OBJECTION TO CONFIRMATION**

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Freedom Mortgage Corporation (“Creditor”), a secured creditor of the above-referenced debtor, hereby objects to confirmation of the Chapter 13 Plan (the “Plan”) which was filed with the above-entitled Court. (Docket No. 2.)

**TREATMENT OF THE FORECLOSED PROPERTY**

In Section 3.1 of the Plan, the debtors improperly provide for treatment of the loan securing the real property located at 555 North 75 West, Springville, UT 84663 (the “Property”), against which Judge R. Kimball Mosier granted relief pursuant to 11 U.S.C. § 362(d)(4)(B) (“*In Rem* Relief Order”) on October 15, 2019, Case No. 19-2684. A recorded copy of the Order

Terminating the Automatic Stay as to Freedom Mortgage Corporation and Granting In Rem Relief is attached and marked as **Exhibit A**. Pursuant to 11 U.S.C. § 362(d) and the terms of the *In Rem* Relief Order, no bankruptcy may take effect against the Property for a period of two years from the date the order was recorded against the Property. Subsequent to the *In Rem* Relief Order, Creditor conducted a trustee's sale of the Property on January 15, 2020, and recorded a Trustee's Deed pursuant to Utah Code Ann. § 57-1-28(3) on January 17, 2020. True and correct copies of the Notice of Trustee's Sale and recorded Trustee's Deed are attached and marked as **Exhibits B & C**.

The debtors, who listed the Property as their residence in their Chapter petition, were dispossessed of any title interest at the conclusion of the January 17, 2020 foreclosure sale and recording the Trustee's Deed, the debtors' rights in the Property were fixed at the time of filing, and no interest remains to be administered or “cured” in the Chapter 13 case pursuant to 11 U.S.C. §§ 1322 or 1325. In re: McCarn, 218 B.R. 154, 161 (B.A.P. 10<sup>th</sup> Cir. 1998.)

Further, providing for a foreclosed lien in a Chapter 13 case where the debtor only retains a possessory interest, especially for the purpose and with the intent of delaying a subsequent eviction, is so inappropriate as to constitute cause for an award of sanctions under Federal Rule of Bankruptcy Procedure 9011, even in the absence of a safe harbor warning letter. In re: Schemelia, 607 B.R. 455, 461 (Bankr. D. N.Y. 2019).

**CONCLUSION**

Creditor therefore objects to confirmation of the debtors' Plan where it provides any treatment of the foreclosed lien and Property.

DATED: February 27, 2020.

LUNDBERG & ASSOCIATES, PC

By: /s/Mark S. Middlemas

Mark S. Middlemas  
Attorneys for Creditor

**CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)**

I certify that, on February 27, 2020 I electronically filed the foregoing Objection, with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system:

David L. Fisher  
Fisher Law Group PLLC  
fisherlawllc@lawyer.com  
ECF  
Attorney for Debtors

Lon Jenkins  
ecfmail@ch13ut.org  
ECF  
Chapter 13 Trustee

/s/Mark S. Middlemas  
Mark S. Middlemas

CERTIFICATE OF SERVICE – MAIL, OTHER

I certify that, on February 27, 2020 I caused to be served a true and correct copy of the foregoing Objection, as follows:

Mail Service – By regular first class United States mail, postage fully pre-paid addressed to:

Kyle Blaine Jackson  
AmberLee Marie Jackson  
555 North 75 West  
Springville, UT 84663  
Debtors

/s/Mark S. Middlemas  
Mark S. Middlemas

Exhibit “A”

**This order is SIGNED.**

**Dated: October 15, 2019**



**R. KIMBALL MOSIER  
U.S. Bankruptcy Judge**



Armand J. Howell, Bar Number 10029  
Benjamin J. Mann, Bar Number 12588  
Brian J. Porter, Bar Number 14291  
HALLIDAY, WATKINS & MANN, P.C.  
Attorneys for Freedom Mortgage Corporation  
376 East 400 South, Suite 300  
Salt Lake City, UT 84111  
Telephone: 801-355-2886  
Fax: 801-328-9714  
Email: brian@hwmlawfirm.com  
File No: 52036

I hereby certify that the annexes and foregoing is a true and complete copy of a document, or, an authorized electronic entry, on file in the United States Bankruptcy Court for the District of Utah  
Case/AP # 19-26984 Document # 19  
Date Filed: 10/15/19 Date Entered on Docket: 10/15/19  
Number of Pages 4  
DATED: 10/15/19 ATTEST: [Signature] Clerk of Court  
Deputy Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

In re:

CYNTHIA R. HOLMES  
Aka Cynthia Rose Ralston  
Aka Cyndi Holmes

Debtor.

Bankruptcy Case No. 19-26984 RKM

Chapter 13

**ORDER TERMINATING AUTOMATIC  
STAY AS TO FREEDOM MORTGAGE  
CORPORATION AND GRANTING IN  
REM RELIEF**

[Filed Electronically]

Based upon the Motion for Relief filed by Freedom Mortgage Corporation ("Secured Creditor") previously filed with the Court, the hearing held on October 15, 2019, and good cause appearing, the Court does hereby,

**ORDER AS FOLLOWS:**

1. That the automatic stay with respect to the following described real property:

ENT105765:2019 PG 1 of 4  
Jeffery Smith  
Utah County Recorder  
2019 Oct 15 04:11 PM FEE 40.00 BY CS  
RECORDED FOR Halliday, Watkins & Mann, P.C.  
ELECTRONICALLY RECORDED

Lot 37, Plat "A", Taylor Farm Estates Subdivision, according to the Official Plat thereof on file and of record in the Utah County Recorder's Office;  
Parcel ID#: [REDACTED]

Commonly known as 555 North 75 West, Springville, UT 84663;

be and is hereby modified and terminated as of the date hereof to permit Freedom Mortgage Corporation and its successors and assigns to pursue its rights and remedies against the said property under applicable law.

2. This relief is granted pursuant to 11 U.S.C. § 362(d)(4) so that upon recordation of this order in the office of the Utah County Recorder, this order shall be binding in any other bankruptcy case purporting to affect the above described real property located at 555 North 75 West, Springville, UT 84663, filed for two years from the date of the entry of this order.
3. Secured Creditor and/or its successors and assigns may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement. Any such agreement shall be non-recourse unless included in a reaffirmation agreement.
4. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other Chapter of Title 11 of the United States code.
5. The Chapter 13 Trustee shall cease mailing payments on unpaid pre-petition default amounts. Secured Creditor has 180 days from the date of this order to amend its Proof of Claim. In the event that the Secured Creditor's Proof of Claim is not amended within 180 days of this order, Secured Creditor's Proof of Claim shall be reduced to the actual amount paid by the Trustee.
6. If this order is entered pre-confirmation, it shall not be amended or altered or superseded

ENT **105765 : 2019** PG 3 of 4

by the confirmation order entered in this case but shall be considered a part of and integrated into the confirmation order and the automatic stay shall not be re-imposed by the entry of the confirmation order.

7. Pursuant to Rule 4001(a)(3) the court hereby waives the 14-day waiting period and this order shall go into effect immediately.

END OF ORDER



**DESIGNATION OF PARTIES TO BE SERVED**

Service of the foregoing **ORDER TERMINATING AUTOMATIC STAY AS TO FREEDOM MORTGAGE CORPORATION AND GRANTING IN REM RELIEF** shall be served to the parties and in the manner designated below:

**By Electronic Service:** The parties of record in this case as identified below, are registered CM/ECF users and will be served notice of entry of the foregoing Order through the CM/ECF system:

Lon Jenkins  
Chapter 13 Trustee  
ecfmail@ch13ut.org  
lneebling@ch13ut.org

Pro Se  
Debtor's Attorney  
prosedebtor@email.com

United States Trustee  
USTPRegion19.SK.ECF@usdoj.gov

Brian J. Porter  
HALLIDAY, WATKINS & MANN, P.C.  
Secured Party's Attorney  
brian@hwmlawfirm.com

**By U.S. Mail:** In addition to the parties of record receiving notice through the CM/ECF system, the following parties should be served notice pursuant to Fed. R. Civ. P. 5(b):

Cynthia R. Holmes  
555 North 75 West  
Springville, UT 84663

## Exhibit “B”

## NOTICE OF TRUSTEE'S SALE

The following property will be sold at public auction to the highest bidder without warranty, at the South Main Entrance, Fourth Judicial District, American Fork Division, 75 East 80 North, American Fork, Utah, on 1/15/20 at 09:00 AM, for the purpose of foreclosing a Trust Deed executed by Cynthia Holmes and James Holmes and Amberlee Jackson, as Trustors, in favor of Mortgage Electronic Registration Systems, Inc. as nominee for First Mortgage Corporation, a California Corporation, D/B/A FMC Mortgage Company, its successors and assigns, recorded on 4/29/15, as Entry # 36212:2015, covering real property purportedly known as 555 North 75 West, Springville, UT 84663, and more particularly described as:

**Lot 37, Plat "A", Taylor Farm Estates Subdivision, according to the Official Plat thereof on file and of record in the Utah County Recorder's Office. TAX # [REDACTED]**

Freedom Mortgage Corporation is the current Beneficiary of the Trust Deed. Record owners of the property as of the recording of the Notice of Default are reported to be Cynthia Holmes and James Holmes and Amberlee Jackson.

A \$20,000.00 deposit in the form of a bank or credit union cashier's check or a bank official check, payable to Halliday, Watkins & Mann, P.C., is required to bid. A successful bidder who fails to tender the full purchase price will forfeit the entire deposit. The successful bidder must tender the deposit at the sale and the balance of the purchase price by 12:00 noon the following business day. The balance must be in the form of a wire transfer, bank or credit union's cashier's check, or bank official check payable to Halliday, Watkins & Mann, P.C. A bank or credit union cashier's check must be pre-printed and clearly state that it is a cashier's check. A bank official check must be pre-printed and clearly state that it is an official check. Cash payments are not accepted.


A trustee's deed will be delivered to the successful bidder within five business days after receipt of the amount bid.

Successor Trustee disclaims liability for any error in the street address shown herein. Successor Trustee may void sale due to any unknown facts at time of sale that would cause the cancellation of the sale. If sale is voided, Successor Trustee shall return funds to bidder, and the Successor Trustee and Beneficiary shall not be liable to bidder for any damages. If the sale is set aside for any reason, the Purchaser at the sale shall be entitled only to a return of the deposit paid. The Purchaser shall have no further recourse against the Beneficiary, Trustor, Successor Trustee or the Successor Trustee's attorney.

This is an attempt to foreclose a security instrument and any information obtained will be used for that purpose.

Dated: 12/9/19

HALLIDAY, WATKINS & MANN, P.C.:

By:   
Name: Thomas E. Halliday  
Attorney and authorized agent of the law firm of  
Halliday, Watkins & Mann, P.C.  
Successor Trustee  
376 E 400 S, Ste 300  
SLC, UT 84111  
PH 801-355-2886  
Office Hours: M-F: 8am – 5pm  
H/W # 52036

## Notice to Tenant

As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be sold at public auction to the highest bidder unless the default in the obligation secured by this property is cured. If the property is sold, you may be allowed under Federal Public Law No: 115-174 Sec. 304 to continue to occupy your rental unit up to 90 days following the date of the foreclosure sale or until your rental agreement expires, whichever is later. If your rental or lease agreement expires after the 90-day period, you will be required to provide a copy of your rental or lease agreement to the new owner to verify whether you and/or the rental or lease agreement meets eligibility requirements to remain in the property longer than 90 days after the foreclosure sale of the property.

You must continue to pay your rent and comply with other requirements of your rental or lease agreement or you will be subject to eviction for violating your rental or lease agreement.

The new owner or the new owner's representative will probably contact you after the property is sold with directions about where to pay rent.

The new owner of the property may or may not want to offer to enter into a new rental or lease agreement with you at the expiration of the period described above.

If you are a tenant, Halliday, Watkins & Mann, P.C. recommends that you contact an attorney to determine your rights and obligations.

## Exhibit “C”

ENT6522:2020 PG 1 of 2  
**Jeffery Smith**  
**Utah County Recorder**  
2020 Jan 17 11:54 AM FEE 40.00 BY SM  
RECORDED FOR Halliday, Watkins & Mann, P.C.  
ELECTRONICALLY RECORDED

AFTER RECORDING RETURN TO:  
Halliday, Watkins & Mann, P.C.  
376 East 400 South, Suite 300  
Salt Lake City, UT 84111

MAIL TAX NOTICE TO:  
White House Design, LLC  
287 East 100 North  
Provo, UT 84606

File Number: [REDACTED]

TAX #: [REDACTED]

### **TRUSTEE'S DEED**

This Deed is made by the law firm of Halliday, Watkins & Mann, P.C., Successor Trustee, under the Trust Deed described below, in favor of **White House Design, LLC, 287 East 100 North, Provo, UT 84606**, as Grantee.

WHEREAS, on April 15, 2015, Cynthia Holmes and James Holmes and Amberlee Jackson, as Trustors, executed and delivered to Scott Lundberg, Esq., as Trustee, for the benefit of Mortgage Electronic Registration Systems, Inc. as nominee for First Mortgage Corporation, a California Corporation, D/B/A FMC Mortgage Company, its successors and assigns, as Beneficiary, a certain Trust Deed to secure the performance by the Trustors of obligations under a Promissory Note of the same date executed and delivered for a valid consideration to the Beneficiary and the Trust Deed having been recorded in the office of the Utah County Recorder on April 29, 2015, as Entry No. 36212:2015, describing the property set forth below; and

WHEREAS, a breach and default occurred under the terms of the Note and Trust Deed in the particulars set forth in the Notice of Default in this matter; and

WHEREAS, Halliday, Watkins & Mann, P.C., was duly appointed by the Beneficiary as Successor Trustee by a Substitution of Trustee recorded in the Office of the County Recorder of Utah County, State of Utah, on March 5, 2018, as Entry No. 20880:2018; and

WHEREAS, Halliday, Watkins & Mann, P.C., as Successor Trustee under the Trust Deed, executed and recorded in the Office of the County Recorder of Utah County, a Notice of Default containing an election to sell the trust property, which was recorded on February 28, 2018, as Entry No. 19443:2018; and that no later than ten days after the Notice of Default was filed for record, the Trustee mailed, by certified mail, a copy of the Notice of Default to the Trustors, and to each person whose name and address were set forth in a request for notice filed for record prior to the filing of the Notice of Default; and

WHEREAS, Halliday, Watkins & Mann, P.C., as Successor Trustee, pursuant to the Notice of Default, and in accordance with the Trust Deed, did execute his Notice of Trustee's Sale stating that as Successor Trustee, he would sell at public auction to the highest bidder for cash, in lawful money of the United States of America, the property described, and fixing the time and place of sale as January 15, 2020, at 09:00 AM of said day, at the South Main Entrance, Fourth Judicial District, American Fork Division, 75 East 80 North, American Fork, Utah, and did cause copies of the Notice of Sale to be posted for not less than 20 days before the date of the sale in a conspicuous place on the property to be sold and also at the office of the County Recorder of each County in which the trust property, or some part of it, is located; and the Successor Trustee did cause a copy of the Notice of Sale to be published once a week for three consecutive weeks in the Lehi Free Press, a newspaper having a general circulation in the county in which the property to be sold is situated, the last publication being at least 10 days but not more than 30 days before the date the sale is scheduled, and also published on [utahlegals.com](http://utahlegals.com), the website established by Utah's newspapers for legal notices, for not less than 30 days before the date the sale is scheduled; and that



no later than 20 days before the date of the sale, the Trustee also mailed, by certified mail, a copy of the Notice of Sale to the Trustor and to each person whose name and address were set forth in a request for notice filed for record prior to the filing of the Notice of Default; and

WHEREAS, all applicable statutory provisions of the State of Utah and all of the provisions of the Trust Deed have been complied with as to the acts to be performed and the notices to be given; and

WHEREAS, the Successor Trustee did at the time and place of sale by public auction sell, to Grantee, being the highest bidder, the property described for the sum of \$267,000.00 paid in cash in lawful money of the United States of America.

NOW THEREFORE, the Successor Trustee, in consideration of the premises recited and of the sum above mentioned, bid and paid by Grantee, the receipt of which is acknowledged, and by virtue of the authority vested in him by the Trust Deed, does by these presents grant and convey to the Grantee above named, but without any covenant or warranty, express or implied, all of that certain real property situated in Utah County, State of Utah, described as follows:

Lot 37, Plat "A", Taylor Farm Estates Subdivision, according to the Official Plat thereof on file and of record in the Utah County Recorder's Office. TAX #: [REDACTED]

TOGETHER WITH any and all improvements, fixtures, appurtenances and easements now situated on or pertaining to the property.

DATED: January 17, 2020.

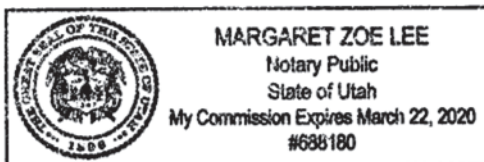
HALLIDAY, WATKINS & MANN, P.C.:

By: [Signature]

Name: Armand J. Houelle  
Attorney and authorized agent of the law firm of  
Halliday, Watkins & Mann, P.C.  
Successor Trustee

State of Utah )  
                          ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this Jan. 17, 2020, by Armand J. Houelle as an attorney and authorized agent of the law firm of Halliday, Watkins & Mann, P.C., the Successor Trustee.



[Signature]  
Notary Public